Supreme Court, U.S.
FILED
05-106 JUL 13 2005
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

GRAND TRUNK WESTERN RAILROAD INCORPORATED;
TRACEY MILLER; LAURENCE T. WIZAUER;
DAVID CROMBIE; PETER BRANDON;
THOMAS WILLETT; LAWRENCE R. MARTENIS,
PETITIONERS

v.

JAMES T. RODDY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PAUL A. CUNNINGHAM
Counsel of Record
GERALD P. NORTON
DAVID A. BONO
SIMON A. STEEL
HARKINS CUNNINGHAM LLP
1700 K Street, N.W.
Suite 400
Washington, DC 20006-3817
(202) 973-7600
Attorneys for Petitioners

ROBERT S. HAWKINS
ANDREW J. ROLFES
KLETT, ROONEY,
LIEBER & SCHORLING
Two Logan Square
12th Floor
Philadelphia, PA 19103
(215) 567-7500
Of Counsel

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 223-3160 ♦ USSCINFO.COM

QUESTION PRESENTED FOR REVIEW

Whether federal courts have federal question jurisdiction over a claim pled under state law that involves interpretation or application of a collective bargaining agreement subject to the Railway Labor Act and hence constitutes a "minor dispute" subject to mandatory arbitration under Section 3 of that Act, 45 U.S.C. § 153.

PARTIES TO THE PROCEEDINGS

The only parties in the court below are listed in the caption to the petition.

STATEMENT UNDER RULE 29.6

Petitioner Grand Trunk Western Railroad Incorporated is a wholly owned subsidiary of Grand Trunk Corporation, a Delaware corporation. Grand Trunk Corporation is, in turn, a wholly owned subsidiary of Canadian National Railway Company, a Canadian corporation. No publicly held company owns 10% or more of the stock of Canadian National Railway Company.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDINGS ii

STATEMENT UNDER RULE 29.6 ii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

i. Statutory Background 2

ii. Statement of Facts 4

iii. Course of Proceedings and Disposition Below 9

REASONS FOR GRANTING THE WRIT 13

I. The Sixth Circuit's Decision Places It On The Minority Side Of A Six-To-Three Circuit Split On An Important And Recurring Issue of Federal Law 13

A. Six Circuits Hold That State Law Claims That Constitute Minor Disputes Under The Railway Labor Act Fall Within Federal Question Jurisdiction 15

B. Two Other Circuits Preceded The Sixth Circuit In Holding That State Law Claims That Constitute Minor Disputes Under The RLA Fall Outside Federal Question Jurisdiction 18

C. This Deeply Entrenched Conflict Will Likely Persist Until Resolved By This Court 19

II. The Sixth Circuit's Decision Conflicts With Relevant Decisions Of This Court 20

A. This Court Has Held That Federal Courts Have Federal Question Jurisdiction To Enforce The RLA Obligation To Arbitrate Minor Disputes 21

B. This Court Has Held That Section 3 Of The RLA Has No Less Preemptive Force Than Section 301 Of The Labor-Management Relations Act, 29 U.S.C. § 185, Under Which State Court Actions Asserting Arbitrable Grievances Are Subject To Federal Question Jurisdiction 24

III. The Sixth Circuit's Decision Is Contrary To Congress's Intent to Make The Federal Courts Available To Enforce The RLA Dispute Resolution Process 27

CONCLUSION 30

APPENDIX

Appendix A – Sixth Circuit Opinion (01/14/05) 1a

Appendix B - District Court Order Denying Motion to Remand (10/04/02) 15a

Appendix C - Transcript of District Court Hearing on Motion to Remand (09/25/02) 16a

Appendix D- District Court Memorandum Opinion and Order Granting Summary Judgment (11/21/02) 28a

Appendix E- Adjustment Panel Award (08/26/03) 42a

Appendix F - Sixth Circuit Order Denying Rehearing (03/15/05) 47a

Appendix G - Statutory Appendix 49a

TABLE OF AUTHORITIES

CASES

AETNA CAS. & SUR. CO. v. FLOWERS, 330 U.S. 464 (1947) 12

ANDERSON v. AM. AIRLINES, INC., 2 F.3D 590 (5TH CIR. 1993) 17

ANDREWS v. LOUISVILLE & NASHVILLE R.R., 406 U.S. 320 (1972) 26

ARBOGAST v. CSX CORP., 831 F.2D 290 (UNPUBLISHED TABLE DECISION), REPORTED IN FULL AT 1987 WL 38662 (4TH CIR. 1987) 15, 16

AVCO CORP. v. AERO LODGE NO. 725, INT'L ASS'N OF MACHINISTS, 390 U.S. 557 (1968) 24

BEERS v. S. PAC. TRANSP. CO., 703 F.2D 425 (9TH CIR. 1983) 16

BENEFICIAL NAT'L BANK. v. ANDERSON, 539 U.S. 1 (2003) 25, 26

BHD. OF R.R. TRAINMEN v. CHICAGO RIVER & IND. R.R., 353 U.S. 30 (1957) 21

BHD. OF R.R. TRAINMEN v. HOWARD, 343 U.S. 768 (1952) 21

BURGOS v. EXEC. AIR, INC., 914 F. SUPP. 792 (D.P.R. 1996) 14

CALIFORNIA v. TAYLOR, 353 U.S. 553 (1957) 21, 28

CHILLE v. UNITED AIRLINES, 304 F. SUPP. 2D 466 (W.D.N.Y. 2004) 15

CONSOL. RAIL CORP. v. RY. LABOR EXECS. ASS'N, 491 U.S. 299 (1989) 2, 22

DEFORD v. SOO LINE R.R., 867 F.2D 1080 (8TH CIR. 1989) 16, 18, 20, 26

DETROIT & TOLEDO SHORE LINE R.R. v. UNITED TRANSP. UNION, 396 U.S. 142 (1969) 3

ELGIN, JOLIET, & E. RY. v. BURLEY, 325 U.S. 711 (1945) 3

ESPINAL v. N.W. AIRLINES, 90 F.3D 1452 (9TH CIR. 1996) 17

FRANCHISE TAX BD. v. CONSTR. LABORERS VACATION TRUST, 463 U.S. 1 (1983) 25

GEDDES v. AM. AIRLINES, INC., 321 F.3D 1349 (11TH CIR. 2003) 19, 22, 26

GORE v. TRANS WORLD AIRLINES, 210 F.3D 944 (8TH CIR. 2000) 11, 16, 26

GRABLE & SONS METAL PRODS., INC. v. DARUE ENG'G & MFG., NO. 04-603, SLIP OP. AT 9 (JUNE 13, 2005) 23

GRADDICK v. NEWMAN, 453 U.S. 928 (1981) 12

GRAF v. ELGIN, JOLIET & E. RY., 790 F.2D 1341 (7TH CIR. 1986) 15, 26

GROTE v. TRANS WORLD AIRLINES, INC., 905 F.2D 1307 (9TH CIR. 1990) 16

GUNTHER v. SAN DIEGO & ARIZ. E. RY., 382 U.S. 257 (1965) 29

HAWAIIAN AIRLINES, INC. v. NORRIS, 512 U.S. 246 (1994) 3, 26, 27, 28

INT'L ASS'N OF MACHINISTS v. CENTRAL AIRLINES, INC., 372 U.S. 682 (1963) 22, 23

LEU v. NORFOLK & W. RY., 820 F.2D 825 (7TH CIR. 1987) 15

MERRELL DOW PHARMS., INC. v. THOMPSON, 478 U.S. 804 (1986) 23

MERSMANN v. CONT'L AIRLINES, 335 F. SUPP. 2D 544 (D.N.J. 2004) 15

METRO. LIFE INS. CO. v. TAYLOR, 481 U.S. 58 (1987) 25

MOSES H. CONE MEM'L HOSP. v. MERCURY CONSTR. CORP., 460 U.S. 1 (1983) 29

PITTSBURGH & LAKE ERIE R.R. v. RY. LABOR EXECS. ASS'N, 491 U.S. 490 (1989) 22

PRICE v. PSA, INC., 829 F.2D 871 (9TH CIR. 1987) 17

RY. LABOR EXECS. ASS'N v. PITTSBURGH & LAKE ERIE R.R., 858 F.2D 936 (3D CIR. 1988) 18, 22

REPUBLIC STEEL CORP. v. MADDOX, 379 U.S. 650 (1965) 26

SCHROEDER v. TRANS WORLD AIRLINES, INC., 702 F.2D 189 (9TH CIR. 1983) 16, 17

SHAFII v. BRITISH AIRWAYS, PLC, 83 F.3D 566 (2D CIR. 1996) 17, 18

SIROIS v. BUS. EXPRESS, INC., 906 F. SUPP. 722 (D.N.H. 1995) 14

SKINNER V. RY. LABOR EXECS. ASS'N, 489 U.S. 602 (1989) 5, 6

SOLIMO V. METRO-NORTH COMMUTER R.R., 253 F. SUPP. 2D 733 (S.D.N.Y. 2003) 15, 18

TEXAS & NEW ORLEANS R.R. V. BHD. OF RY. & S.S. CLERKS, 281 U.S. 548 (1930) 26

THINGS REMEMBERED, INC. V. PETRARCA, 516 U.S. 124 (1995) 20

UNION PAC. R.R. V. SHEEHAN, 439 U.S. 89 (1978) 2

UNITED STATES V. CALIFORNIA, 297 U.S. 175 (1936) 28

VIRGINIAN RY. V. SYS. FED'N NO. 40, 300 U.S. 515 (1937) 28

STATUTORY PROVISIONS & REGULATIONS

9 U.S.C. §§ 1-12 29

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1331 ..... *passim*

28 U.S.C. § 1441 ..... 1, 4

28 U.S.C. § 1447(d) 20

29 U.S.C. § 185 ..... 13, 21, 24

29 U.S.C. §§ 1001, *et seq.* 25

45 U.S.C. §§ 151, *et seq.*. 2

45 U.S.C. § 151a 2

45 U.S.C. § 151a(1) 2

45 U.S.C. § 151a(5) 3

45 U.S.C. § 152, Fourth 17

45 U.S.C. § 153 ..... *passim*

45 U.S.C. § 153, First (i) 3

45 U.S.C. § 153, First (p) 22, 29

45 U.S.C. § 153, First (q) 22, 29

45 U.S.C. § 153, First (x) 3

45 U.S.C. § 153, Second 17

45 U.S.C. §§ 181-88 2

49 U.S.C. § 20101, *et seq.* 5

49 C.F.R. § 219.9(a) 5

49 C.F.R. § 219.102 5

49 C.F.R. § 219.105(b) 5

Mich. Comp. Laws § 37.2205a 9

MISCELLANEOUS

53 Fed. Reg. 47102 6

Sup. Ct. R. 10(a) 14

Sup. Ct. R. 10(c) 21

16 James Wm. Moore *et al.*, *Moore's Federal Practice* § 107.14[4][b][v][D], at nn.265.1-.3 (3d ed. 1997 & Supp. 2005) 15

Eric J. Moss, *The Breadth of Complete Preemption*, 76 Va. L. Rev. 1601, 1618-25 (1990) 15

Federal Question Jurisdiction, 37 Loy. L.A. L. Rev. 1443, 1489 n.250 (2004) 26